C.W.P.No.3996 of 2006

Date of Decision: September 19, 2006.

Title of the Case:

Rattan Singh and others … … …. Petitioners

Versus

Chandigarh Administration and another …. ….. Respondents

Name of the Bench:

Hon'ble Mr.Justice Aoshutosh Mohunta
Hon'ble Mrs.Justice Nirmal Yadav

Present:- Mr.Chetan Mittal, Advocate,
for the petitioners.

Mr.Sanjeev Sharma, Standing Counsel
for U.T., Chandigarh.

Ashutosh Mohunta, J.

Rattan Singh and 26 others, who are agriculturists and are residents of village Dhanas falling in U.T.Chandigarh, have filed this petition under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari quashing the notification dated 30.1.2006 (Annexure P3) under Section 4, as well as the notification dated 15.2.2006 (Annexure P4) under Section 6 of the Land Acquisition Act, 1894 (for short

'the Act') whereby their land measuring 162.5 acres situated in the revenue estate of village Dhanas, Hadbast No.15, has been acquired by invoking the urgency provisions under Section 17 of the Act.

In short, the facts giving rise to the present writ petition are that the abovesaid land of the petitioners has been acquired by the respondents-Chandigarh Administration vide the impugned notifications by invoking the urgency provisions contained in Section 17 of the Act, with the alleged object of "rehabilitation of slum dwellers in a time bound manner as the squatters are sitting on the acquired land and the important projects held up for want of their shifting." Thus the petitioners have been deprived of the opportunity to file objections under Section 5-A to the notification dated 30.1.2006 (Annexure P3) issued under Section 4 of the Act.

A detailed written statement has been filed on behalf of the respondents whereby the allegations contained in the writ petition have been controverted.

In order to controvert the written statement filed by the respondents, the petitioners have filed a replication wherein the averments made in the writ petition have been reiterated.

The primary contention raised by the learned counsel for the petitioners is that Section 17 of the Act confers extraordinary powers on the authorities under which it can only dispense with the normal procedure laid down under Section 5-A of the Act in exceptional cases of urgency and in the

issuance of the impugned notifications there does not seem to be any urgency and there is no reason why the U.T.Administration has deprived the petitioners of their valuable right of filing objections under Section 5-A. It has further been contended that the public purpose, however, laudable it may be, by itself is not sufficient to invoke the provisions of Section 17 and thereby depriving the landowner of his right to file objections under Section 5-A of the Act. In support of his contention, Mr.Mittal has placed reliance on **Union of India and others v. Krishan Lal Arneja and others,** AIR 2004 Supreme Court 3582; **Union of India and others v. Mukesh Hans etc.,** AIR 2004 Supreme Court 4307; **Hindustan Petroleum Corpn.Ltd. v. Darius Shapur Chenai and others**, AIR 2005 Supreme Court 3520; **Narayan Govind Gavate etc.** v. **State of Maharshtra and others**, AIR 1977 S.C. 183; **Munshi Singh and others v. Union of India**, AIR 1973 Supreme Court 1150; and **The State of Punjab and another v. Gurdial Singh and others,** AIR 1980 Supreme Court 319.

The contentions raised by the Mr.Chetan Mittal have vehemently been controverted by Mr.Sanjiv Sharma, learned counsel appearing on behalf of the U.T.Administration. It has been contended by him that the emergency provisions contained in Section 17 of the Act have been invoked by the authorities as the land in question is urgently required for rehabilitation of the slum dwellers who are in occupation of the Government land at different places due to which important projects of the Administration have been held up.

Mr.Sanjiv Sharma has brought the pointed attention of the Court to the fact that the authorities cited by Mr.Chetan Mittal, learned counsel for the petitioners, are not applicable to the facts appearing in the present case. Mr.Sanjiv Sharma, learned counsel for the respondents has placed reliance on **Union of India and Ors. v. Shri Ghanshyam Dass Kedia & Ors.**, 1996 (2) Indian Civil Cases 50, wherein it has been held that the High Court is not a Court of appeal over the subjective satisfaction and the opinion of the Government is entitled to great weight. Reliance has also been placed on **Chameli Singh and others v. The State of U.P. and others**, 1996(1) Rent Law Reporter 255, to contend that the Court will not interfere unless exercise of powers suffers from mala fide or it is a colourable exercise of power.

We have heard the learned counsel for the parties and gone through the case law cited by them.

Undisputedly in the instant case the ground for invoking the urgency provisions of Section 17 of the Act is to rehabilitate the slum dwellers who are in occupation of the acquired land due to which important projects have been held up for want of their shifting. In the preliminary objections raised in the written statement filed on behalf of the respondents it has been stated that a number of development projects like Rajiv Gandhi Technology Park, Science City, Amusement Parks and other commercial as well as planned residential projects have already been sanctioned and investment of crores of rupees has already been made. In the process of development, a large number

of migrant labourers occupied the vacant acquired land. Earlier a labour colony was set up in the form of Colony No.5 and these labourers were shifted to this colony with a condition that they would be shifted to rehabilitation colonies on permanent basis in a planned manner. In Preliminary Objection No.5 it has been stated that due to delay in completion of various projects, the Chandigarh Administration is facing serious threat of escalation of cost factor involved in various projects and also "losing collaboration with various multinational companies which are handling development projects" and had been promised vacant land for accomplishment of the projects. In preliminary objection No.6 it has been stated that "Chandigarh Housing Board has already been directed to deposit approximately 80% of part payment of the tentative compensation i.e. Rs.162 crore and the tentative compensation is @ 50 lacs per acre. As per rough estimate about 20,000 laborers are likely to be rehabilitated on this land with the help of Chandigarh Housing Board." Keeping in view the details submitted by respondents in the written statement justifying the invocation of the urgency provision contained in Section 17 of the Act, there is not even an iota of doubt in our mind that the land in question is urgently needed by the Chandigarh Administration in order to enable it to accomplish the various development projects to be undertaken. Rehabilitation of the work force at the appropriate place is the utmost priority of the Government. The authorities cited by Mr.Chetan Mittal, learned counsel for the petitioners, are not applicable to the facts in the present case. In **Union of India v. Krishan**

Lal Arneja's case (supra) the urgency provisions were invoked when earlier notification issued for the same purpose was allowed to lapse on 10th March, 1987. Similarly, in **Union of India v. Mukesh Hans's case (supra)** the land in dispute therein was acquired for organizing an annual festival called "Phool Walon Ki Sair" which was started during Mughal regime. But over a period the same was discontinued. In the year 1961 the then Prime Minister of India Pt.Jawahar Lal Nehru took initiative to revive this old age festival to focus the spirit of secularism. Earlier acquisition proceedings were initiated. However, the attempt to acquire the land was allowed to be lapsed by the authorities concerned by efflux of time. Thereafter, again the acquisition proceedings for the same purpose were initiated with the aid of Section 17 of the Act. It was in this background that Hon'ble the apex Court held that "if the appropriate Government decides to take away this minimal right then its decision to do must be based on materials on record to support the same and bearing in mind the object of S.5-A." In **Hindustan Petroleum Corporation's case (supra)** it has been held by their Lordships of the Supreme Court as under:-

> " The conclusiveness contained in Sec.6 of the Act indisputably is attached to a need as also the purpose and in this regard ordinarily, the jurisdiction of the Court is limited but it is equally true that when an opportunity of being heard has expressly be conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5 and 6 of the Act must be ready conjointly. The Court in a case, where there has been total non-compliance or substantial non-compliance of the provisions

> of Section 5-A of the Act cannot fold its hands and refuse to grant a relief to the writ petitioner. Section 6(3) of the Act renders a declaration to be a conclusive evidence. But when the decision-making process itself is in question, the power of judicial review can be exercised by the Court in the event the principles, viz., illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner."

A perusal of the said judgment would show that Hon'ble the apex Court has held that the Court can exercise the power of judicial review when the orders impugned suffer from the principles of illegality, irrationality and procedural impropriety. In **Hindustan Petroleum Corporation's case (supra)** after an earlier notification published on 15.10.1985 was allowed to lapse, a fresh notification under Section 4(1) for the same purpose was issued with the aid of Section 17 of the Act. However, in the present case it is not the situation. In the present case the authorities require the land under acquisition for rehabilitation of the slum dwellers/laborers who have occupied government land whereon important projects involving investment of crores of rupees are to be undertaken. Thus, it cannot be said by any stretch of imagination that in the present case there is any illegality, irrationality or procedural impropriety in invoking the urgency provisions contained in Section 17 of the Act.

It has been held by their Lordships of the Supreme Court in **Anand Buttons Ltd. v. State of Haryana,** 2005 SCCR 207, that the Authority who has to carry out the planned development is the best judge to

decide which land can be exempted from acquisition without jeopardizing the development scheme. It is not possible for the Court to sit in appeal over exercise of such satisfaction by the authority. In **Union of India & Ors. v. Shri Ghansyam Dass Kedia** (supra) it has been held by their Lordships of the Supreme Court that the "High Court is not a court of appeal over subjective satisfaction and the opinion of the Government is entitled to great weight. Therefore, it cannot be said that the notification should specifically recite the nature of urgency. It is enough, if the record discloses the consideration by the Government on urgency for taking action under ss.17(1) and (2)." Thus, when the authorities have been able to show that there was a consideration before issuing the impugned notification, the High Court cannot say that there was no proper application of mind at the level of the government. In the case reported as **Chameli Singh and others v. The State of U.P. and another**, 1996(1) Rent Law Reporter 255, it has been held by their Lordships of the Supreme Court that the Court will not interfere unless exercise of power suffers from mala fide or it is colourable exercise of power. In this view of the matter, we are not inclined to interfere with the invocation of the urgency provisions contained in the Section 17 of the Act by the Chandigarh Administration to acquire the land in question for the purpose of rehabilitation of about 20,000 labourers/slum dwellers who are already in occupation of the acquired land which is needed by the authorities for accomplishment of various development projects.

In the light of above discussion, we do not find any merit in this petition. It is, accordingly, dismissed. The interim order of stay stands vacated. There shall, however, be no order as to costs.

(Ashutosh Mohunta)
Judge

September 19, 2006.

(Nirmal Yadav)
Judge